

Exchange-Traded Funds (ETFs)

Playing a critical role in shaping this rapidly growing area of the investment management landscape, Stradley Ronon represents a broad range of exchange-traded funds (ETFs), their investment advisers and/or their independent directors ranging from representations involving three of the four largest ETF groups in the United States, more than half of the top 30 ETF groups, and startup ETF groups. We guide our clients in navigating the complex regulatory and market environments in which ETFs are developed, launched and operated. We also work with boards of directors on all aspects of the establishment and oversight of ETFs.

On the Forefront of the ETF Landscape

Our firm has been involved at all stages in some of the most innovative and groundbreaking investment products, including exchange-traded products (ETPs) that are not registered under the Investment Company Act of 1940. In the burgeoning cryptocurrency arena, we were counsel to one of the industry's first spot bitcoin ETPs to launch in the United States and one of several spot ether ETPs to receive listing approval from the U.S. Securities and Exchange Commission (SEC), marking the second type of spot digital asset ETP in the country. We also supported our clients in creating niche investment products such as a physically backed gold ETP with an environmental, social and governance (ESG) focus. We spearheaded the legal work to introduce exchange-traded managed funds (ETMFs) and also helped clients obtain exemptive relief from the SEC to introduce actively managed ETFs that do not publish their portfolios on a daily basis (semi-transparent active ETFs).

Breaking the Mold

In an industry with meteoric growth, we develop creative approaches that help our clients to distinguish themselves and break the mold. On behalf of the largest actively managed ETF group, we assisted with the first major conversions of mutual funds to ETFs — an innovative way for an asset manager to enter the highly competitive ETF space with significant existing assets and investors. We serve as trusted counsel to numerous independent directors, advising on the launch of a variety of innovative ETF products, including target-date ETFs, option overlay ETFs, thematic ETFs, single-country ETFs and target maturity bond ETFs. We also are working with various asset managers to obtain breakthrough exemptive relief to allow for ETF share classes. Our thoughtful analysis and vigorous advocacy, combined with our deep understanding of the SEC, allow us to counsel ETF providers on how best to achieve their business goals. In particular, our deep bench of former SEC staff members ensures that we understand ETF regulatory policy, which can be critical to persuading the SEC to permit ETF innovation.

Our Services

Helping Advisers, ETFs and Boards Navigate the Latest in ETF Product Innovation



Our firm is well-versed in counseling both established ETF groups and new entrants to the ETF marketplace, including providing strategic advice on product development and structure. We prepare the full range of documentation required to establish and operate new ETFs, including governance documentation, compliance policies and operational procedures. We also draft and negotiate agreements with administrators, index providers and other service providers. Our firm counsels actively managed ETFs as well as ETFs designed to replicate a variety of indexes, including alternative indexes, single-country indexes, and those of broader international sectors and industries. Our lawyers have experience assisting new market entrants create their ETF complexes.

On behalf of our ETF clients, we also routinely:

- Draft and file SEC registration statements and related documentation.
- Prepare and submit applications for listings on securities exchanges and advise on compliance with the exchanges' listing requirements and trading rules.
- Prepare applications to obtain the necessary regulatory exemptions from the SEC.
- Assist with SEC inquiries and examinations.
- Help to structure ETFs to ensure they will satisfy tax diversification and "good income" requirements.
- Negotiate agreements with authorized participants.
- Coordinate with non-U.S. legal professionals and service providers with respect to cross-listings, tax reclaims, compliance with international securities laws, regulations and tax requirements.

We also advise non-U.S. asset managers regarding sub-advisory relationships with U.S. ETFs and the limits on U.S. investment companies purchasing U.S. ETF shares and provide comparative law support.

Representative Matters

- Represented Invesco Capital Management in a first-of-its-kind conversion of the \$400 billion Invesco QQQ Trust, Series 1, from an exchange-traded fund (ETF) organized as a unit investment trust (UIT) to an ETF organized as an open-end management investment company.
- As counsel to the Dimensional funds, Stradley Ronon prepared the application for exemptive relief granted by the U.S. Securities and Exchange Commission (SEC) to Dimensional Fund Advisors to offer exchange-traded funds (ETFs) as a share class within a multiple share class structure (ETF share class).
- Provide ongoing representation to ETFs, their investment advisers, and/or their independent directors with respect to trillions of dollars in assets under management and more than 1,000 separate ETF portfolios.

- Working on behalf of numerous clients to secure SEC approval to launch ETF share classes of U.S. mutual funds, including advising Dimensional Fund Advisors on the longest pending exemptive application for ETF share class relief that has served as a model for the subsequent filings by other asset managers.
- Represented Grayscale, a leading crypto-focused asset manager, in launching its 1940 Act ETF platform and a variety of 1940 Act ETFs providing digital asset exposure, including those that invest in digital-asset-related derivatives.
- Advised numerous major fund groups on their entrance into the ETF marketplace.
- Advised on Section 351 conversions of separate accounts and private funds to ETFs, including preparation of all transaction-related and board documents.
- Advised the Dimensional Funds and their independent directors with respect to the first major conversions of mutual funds to ETFs.
- Assisted the Independent Directors Council (IDC) in updating its educational materials for ETF directors.
- Represented the Invesco ETFs in their acquisition of the \$37 billion Guggenheim ETF complex.
- Obtained innovative no-action relief that permits certain index-based ETFs to adjust their diversification status based on the composition of their underlying index.
- Represented Blue Tractor in obtaining the first exemptive relief to permit actively managed ETFs to publish proxy portfolios rather than their full portfolios (semi-transparent active ETFs).
- Provided comparative law advice to a foreign stock exchange considering permitting actively managed ETFs to trade on its facilities for the first time.